IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 3762 OF 1991

WITH

SPECIAL CIVIL APPLICATION NO. 7955 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

SHARIFUNNISSA WD/O VAJAHATHUSEN

Versus

SHASNA ADHIKARI NAGAR PRATHMIKSHIKSHAN SAMITI

Appearance:

1. Special Civil Application No. 3762 of 1991

MR MAHBOOB M SHAIKH FOR MR S.K. BUKAHRI for Petitioner.
MR SM MAZGAONKAR for MR SN SHELAT for Respondent No. 1
MR KETAN D PARKH AGP for Respondent No. 2 to 4.

2. Special Civil Application No. 7955 of 1996

MR SM MAZGAONKAR for Petitioner No. 1
MR KETAN D PAREKH, AGP for Respondent No. 2 and 3.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 04/07/2001

ORAL COMMON JUDGEMENT

In both these petitions common issue is involved and hence both these petitions are disposed of by this common judgment.

2. In Spl. C. A. No. 3762/91 it is stated that the petitioner's husband joined service as an Assistant Teacher with the respondent no. 1 with effect from 16-6-1938. In the year 1959-60 due to some medical unfitness the husband of the petitioner was retired with effect from 10-7-1960 and he expired on 25-7-1966. The pension scheme was made applicable to the employees of the State Government and it was also made applicable to the teachers of the employees of the respondent no. 1 and that scheme came into force on 1-10-1961. Later on, the family pension scheme was introduced with retrospective effect by the Government Resolution dated 1-1-1972. The said pension scheme was made applicable to the employees who were in service on 1-6-1971 or recruited thereafter. Certain amendments were also made in the family pension scheme in the year 1989-90. The petitioner's husband retired on 10-7-1960 on account of medical unfitness. In the Government Resolution dated 1-1-1972 it is mentioned that in the case of the Government employee who retired prior to 1-6-1971, shall be entitled to the pension as per the Rules in force. As such, the petitioner is entitled for the family pension. The petitioner moved an application dated 29-5-1990 before the respondent no. 1 and the copy of the said application was sent to the respondent no. 3 also and the respondents did not pass any suitable order on the application of the petitioner nor any reply was given to the petitioner till 1991. Thereafter, the petitioner issued a legal notice by Regd. Post A.D. to the respondents and in spite of that no action has been taken by the respondents for grant of family pension to the petitioner.

3. By amendment in the petition, it is stated that the petitioner received a letter dated 12-4-1991 wherein it was stated that her application for family pension has been sent for necessary action to the respondent no. 3. The respondent no. 4 by the letter dated 14-5-1991 informed the petitioner that the no case was made out for granting family pension to the petitioner. Under the resolution dated 19-5-1989, the petitioner is not entitled to the benefit of the family pension.

4. By means of this petition, the petitioner sought for a direction to the respondents to give benefits of family pension scheme as provided in the Government Resolution Annexure-A to the petition dated 19-5-1989.

5. The affidavit-in-reply has been filed wherein it is stated that the Finance Department introduced the family pensions scheme vide resolution dated 1-1-1992 in place of the existing pension scheme for a limited period under the Revised Pension Rules, 1950 and that was made applicable to the Government servants who were on pensionable establishment. Initially, this Family Pension Scheme was contributory type and those who opted for deduction of their two months salary from the D.C.R.G. payable to them upon retirement, were entitled to get the benefits of the new life time Family Pension Scheme. Later on the Scheme became noncontributory with effect from 1-10-1977. However, the said Family Pension Scheme was applicable in terms of the said resolutions to those employees on pensionable establishment who were in service on 1-6-1971 or were recruited thereafter and did not apply to those who had died or retired before 1-6-1971. That pension scheme was applicable to the Municipal teachers and only those persons who made contributory provident fund and subsequently Family Pension Scheme was introduced for the teachers of the Municipal School Board, by way of an alternative retirement benefit scheme from 1-4-1961 and the teachers were given option from time to time either to switch over to the newly introduced Pension Scheme or to continue to be governed by the C.P.F. Scheme. The petitioner's deceased husband had resigned/retired from service with effect from 10-7-1960 as he had lost his vision and had become medically unfit for service. At that time the pension scheme had not become applicable to the Municipal Teachers and the petitioner's deceased husband who was in C.P.F. Scheme retired taking benefit of that scheme. Thereafter, he died on 25-7-1966.

6. In the similar manner, Special Civil Application No. 7955 of 1996 was filed for a direction to the respondents to finalize the family pension case of the petitioner having due regard to the recommendations made by the Administrative Officer, Nagar Prathamik Shikshan Samiti vide his letter dated 21-12-1994 and the instructions contained in the letter dated 16-1-1992 of the Deputy Director of Primary Education, Gujarat State, read with the directions contained in Government Resolution dated 11-12-1986 and to pay the family pension to the petitioner from month to month and pay the arrears

of family pension to the petitioner as provided in Government Resolution dated 11-5-1990.

7. It is also stated in the affidavit-in-reply that the petitioner's husband was working under Nagar Prathmik Sikshan Samiti, Bharuch as a Primary Teacher and he joined services in the year 1912 and he died on 27-3-1943. The Government had introduced the Family Pension Scheme by the Government Resolution dated 1-1-1972 for the widows of the deceased government servants which was applicable initially to the Government servants who retired or died on 1-6-1979 or thereafter.

8. This Court held that option the date for applicability of the pensions scheme was illegal and unconstitutional. Hence, the Government decided by the Resolution dated 11-5-1990 that the benefits of Family Pension Scheme 1972 should be extended to all the eligible members of the families including dependents with effect from 1-10-1971 as per the rates prescribed thereunder. The arrears of family pension should be payable with effect from 1-10-1977 or any subsequent date from which they become eligible for family pension with interest from 1-6-1989 till the date of payment. The benefits of the aforesaid resolutions were not extended to the employees Nagar Prathmik Shikshan Samiti, Bharuch on the ground that those employees who were not governed by the said resolutions. The Deputy Director of the Primary Education, Gujarat State, by letter dated 16-1-1992 informed that by the Government Resolution, Education Department dated 11-12-1986 it was provided that it was not necessary to pass any separate orders in respect of applying the benefits of Government Resolutions issued from time to time to the employees of the Nagar Prathamik Shikshan Samiti under different Municipal Corporations. The Dy. Director of Primary Education advised the Administrative Officer to suitably disposed of the applications received by him for family pension pursuant to the Government Resolution dated 19-5-1989. The petitioner submitted an application on 2-7-1982 for family pension to the Administrative Officer, Nagar Prathmik Shikshan Samiti, Bharuch.

9. The authority concerned replied that the authority to sanction the family pension in respect of the employees who have retired/died before 1-6-1971 is given to the department in which the employee was last serving at the time of his retirement/death. The petitioner was asked to contact the concerned department for preparing and forwarding the family pension papers to the Director of Pension and Provident Fund by the

concerned department. The family pension papers of the petitioner were forwarded to the office of the District Assistant Supervisor, Local Fund Accounts, Bharuch by the letter dated 7-7-1993. The pension papers of the petitioner were returned on 13-12-1993 saying that the authority to sanction financial relief to the widows was with the Director of Pension and Provident Fund, Ahmedabad. It was also pointed out in the said letter that previously in similar cases the proposal for grant of family pension forwarded by the respondent no. 1 was rejected by the Director of Pension and Provident Fund. Even then the family pension is admissible certain documents be submitted to the department concerned. Then the pension papers of the petitioner were forwarded by the respondent no.1 again to the respondent no. 3 and those papers were again returned by the office of the Director of Pension and Provident Fund to the respondent no. 1 under letter dated 16-1-1995. It is also pointed out that the deceased was serving in the Municipal Board and nowhere under the Rules of the Municipal Board pension/gratuity was admissible to its employees and clarification was required in that respect. By the Govt. Resolution dated 11-5-1990 the widows of those employees who were serving under the Government of Gujarat and whose pension or gratuity etc. was payable by the Government of Gujarat were entitled to the family pension and the petitioner's husband was not falling within that category and hence necessary action was required to be taken by the respondent no. 3. Thus, the respondent no. 3 was not justified in refusing to sanction family pension to the petitioner by the letter dated 16-1-1995.

10. Petitioner's husband was working in the school run by Nagar Prathmik Shikshan Samiti, Bharuch since 1912 till the date of his death 27-3-1943. It is also stated that the Government orders are automatically applicable to the teachers of Nagar Prathmik Shikshan Samiti. The action of the respondents is discriminatory and in violation of the fundamental rights under Article 14 of the Constitution of India and are liable to be quashed and set aside and the respondent no. 3 is required to finalise the family pension of the petitioner within the specified period and pay all the arrears of the family pension payable under the Government Resolution dated 11-5-1990 and pay the family pension recovery from month to month.

11. The counter affidavit has been filed stating therein that the petitioner's husband joined his service as a Primary Teacher in the year 1912 and died on 27-3-1943. The resolutions referred to by the petitioner

in her petition have no relevance and they are not applicable to the facts and circumstances of this case and she is not entitled to claim any family pension. It is also stated that the Family Pension Scheme of Primary Teachers in Gujarat State came into force with effect from 1-10-1961 and at that time scheme of Contributory Provident Fund was applicable and the total administration of the said fund of Bharuch was with the Local Board Authority. The Family Pension Scheme came into force from 1-11-1972 in the Gujarat State and as per the directions of the Director of Accounts and Treasury, Gujarat State dated l6-4-1990 the Family Pension Scheme is applicable only to the widow of the Government servants and not applicable to the Primary Education Board. The benefits of the Resolution dated 19.5.1989 are not applicable to the teachers of the Primary Education as per guide lines prescribed by the Finance Department on 17-4-1990. As such, no family pension can be awarded to the petitioner.

12. Heard the learned counsel for the parties. Learned counsel for the petitioner contended that the petitioners are entitled to the family pension as the family pension scheme was introduced on 1-1-1972 to the Government employees who retired or died before 1-6-1971 and all those who were alive on 1-6-1971. But who opted 1972 Family Pension Scheme and in the case of the Government employees who retired prior to 1-6-1971 are entitled to the pension as per the family pension scheme and he relied on the decision of this Court delivered in Special Civil Application No. 587/91 and 589/91 dated 18-12-1991. It was stated in the said decision of this Court that the husband of the petitioner of that petition retired with effect from 31-7-1976. The pension scheme came into existence in the year 1961 available to the employees working with the respondent no. 1 and at that time there was option to opt pension scheme either Pension Scheme or Contributory Provident Fund Scheme. By the Government Resolution dated 3-8-1972 time was extended to exercise option to the employees upto 31-12-1972 and further time was extended by subsequent Government Resolution from 1-2-1978 to 1-4-1978 and the benefits were made applicable to the teachers who were in service on 1-6-71 and the husband of the petitioner of that case was in service on 1-6-1971 and he exercised his option within the extended time. According to the authorities, the teachers who had already retired were not entitled to exercise their option and get the benefits of the said circular. The petitioner of that case retired in the year 1976 and exercised the option thereafter. Therefore, according to the authorities, he

was not entitled to exercise the option.

13. One Chaturbhai Balubhai Shrimali was granted the benefits of the family pension in the year 1972 by the respondent Corporation in favour of his widow by the resolution dated 27-1-1990 with effect from 1-1-1990. This Court found discriminatory treatment by the respondents in refusing to grant benefits of the family pension to the petitioner and hence this Court directed to the respondents to extend the benefits of the family pension and all the benefits thereunder to the petitioner in accordance with the circular dated 1-2-1972 amended from time to time from 1-1-1990.

14. In Special Civil Application No. 589/91 this Court directed the respondents no. 1 to 2 to make requisition to the respondent no. 3 within 15 days from the date of the order and the respondent no. 3 was directed to consider said requisition and to find out whether the amount payable to the petitioner of that petition was required to be covered by the grant. If it was found that there was no objection to the said amount being covered by the grant to make available to the amount to the respondents no. 1 and 2 from the date of the receipt of the order.

15. Learned counsel for the petitioner relied on the decision of the Supreme Court in the case of State of Rajasthan Vs. Rajasthan Pensioner Samaj, reported in AIR 1991 SC 1743 wherein the order of the Rajasthan High Court was set aside on the principle enumerated in case of Krishena Kumar Vs. Union of India reported in AIR 1990 SC 1782, wherein it was held that the CPF retirees form a different class from those who had opted for pension scheme according to the decision in Krishena Kumar's case and as such they are not entitled now to claim as of right to switch over from Provident Fund Scheme to Pension Scheme and consequently the CPF Retirees are not entitled to the benefits granted to the Pension Retirees. However, it was stated in that case that the State Government had agreed to grant ex-gratia payment @ 150-00 per month w.e.f. 1-11-89 to the alive widows of the Jodhpur CPF Retirees which CPF Retirees did not opt for pension scheme as and when chances were given to them to switch over to the pension scheme and died after availing CPF benefits. Learned counsel for the respondents agrees for this proposal made by the learned counsel for the appellant in the Supreme Court's case.

16. I have carefully considered the contentions made by the learned counsel for the parties and perused the

material on record.

17. It appears from the Family Pension Scheme 1972 that the scheme was made applicable with effect from 1-6-1971 and was made applicable to all the regular employees on pensionary establishment temporary or permanent who were in service on 1-6-1971 or retired thereafter. The Government servants eligible to the benefits of the pension scheme were required to surrender a portion of gratuity, where admissible, equal to his two months's 'pay' subject to a maximum of Rs.3,600/-. Where an officer governed by this scheme retires, a bachelor who has not adopted any child, no deduction from his gratuity will be made. In case where the gratuity admissible is less than two months' 'pay' the same will be resumed by Government against the family pension benefits admissible under this scheme. The Government servant in service on the 31st May 1971 who are governed by the Revised Pension Rules, 1950, will be deemed to have opted for this scheme in substitution of the existing Family Pension benefits as admissible under the Revised Pension Rules, 1950, unless they opt, to retain their existing benefits shall exercise such option by the 31st May 1972. The Government also decided with respect to the provisions of recovery of two months' pay from the amount of gratuity for the eligibility of benefits of the new pension scheme, no deduction was required to be made from the amount of death cum retirement gratuity as a contribution towards the family pension under the New Family Pension Scheme, 1972 and that order was given from 1-10-1972 to be applicable to those who have retired on 1-10-1977 or thereafter. Thus, the benefits of new Family Pension Scheme, 1972 are not applicable in the facts and circumstances case where the petitioner's husband had retired with CPf scheme. It is clarified by the Resolution dated 11-5-1990 that eligibility for the Family Pension Scheme, 1972 to the Government. After considering the judgment of this Court extending the benefits of the Family Pension Scheme, 1972 with effect from 1-10-1977, the day from which contribution of two month's pay by Government employee was dispensed with by the State Government to the families of those Government employees, who retired/died before 1-6-1971 and of those who were alive on 1-6-1971 but who opted out of 1972 Scheme. The Court had directed that the State Government should make payment of family pension month to month on or before 10th of every month with effect from 1-4-1989. Reliance was placed by the learned counsel for the petitioner on Clause 4 (g) in which it is stated in the case of the Government employee who retired prior to 1-6-1971 shall be entitled to the pension as per the

Rules in force. After his death the eligible members of the family would be entitled to the family pension at the minimum rate of Rs.375/-. In the present case, the learned counsel for the petitioner could not point out that the petitioner's husband was entitled to the pension as per the Rules in force. Hence, the guide lines made available in the GR dated 11-5-1990 are not applicable to the petitioner. So far as the judgments of this Court are concerned, they have been rendered on the assumption that some other person namely Chaturbhai was granted benefits of the Pension Scheme 1972. In the similar facts and circumstances of the case, the petitioners of those petitions were entitled to the benefits of the Family Pension Scheme 1972.

18. It appears from the rejoinder affidavit filed in Special Civil Application No. 3762 of 91 that the widow of Chaturbhai was granted family pension considering her special case vide resolution dated 22-1-1990 by the respondent no. 1 treating her deceased husband as covered by pension scheme, though posthumously. Had it been shown by the respondents at the relevant time before this Court in the judgments that the case of the petitioners of those petitions was not at par as the case of Chaturbhai was considered as special case. That can not be treated to be as precedent. The benefits would not have been granted to the petitioners of those petitions in the judgment rendered on 18-12-1991.

19. In the facts and circumstances of this case, the petitioners are not entitled to the benefits of the above Family Pension Scheme 1972. I do not find any good reason for interference by this Court in exercise of power under Article 226 of the Constitution of India. Therefore, both these petitions are liable to be dismissed. Accordingly, both these petitions are dismissed, Rule is discharged with no order as to costs.

-0-0-0-0-0-

/JVSatwara/